Leidy, Robert

From: Leidy, Robert
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To: Julia Fonseca; Simms, Jeffrey
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How the EPA Sticks Miners With a Motherlode of Regulation

The years-long wait for mining permits in the U.S. is the worst in the world.

By

Daniel McGroarty

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On Dec. 13, the proposed Rosemont Copper project in southwestern Arizona—which would produce about one-tenth of all the copper in the U.S. every year—got the green light from the U.S. Forest Service to begin operations.

It was a long time coming—more than seven years after the company presented its mine plan and began the National Environmental Protection Act review process. Then again, since the average time to get a mine permitted in the U.S. is a worst-in-the-world seven-to-10 years, Rosemont's long wait isn't the exception. It's the rule.

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The Forest Service's approval should be great news for our high-tech economy, powered by copper in, for instance, electric vehicles, smart homes and smartphones (about 10% of an average phone's weight is copper). But that decision is overshadowed by the last remaining—and most formidable—governmental hurdle, the Environmental Protection Agency, the guardian of Section 404 of the Clean Water Act. Having run the gauntlet of state and local permitting requirements, Rosemont now faces two potentially fatal challenges from the EPA in the final stages of review: either death by a thousand pesky comments or an outright veto.

In the bureaucratic equivalent of sticky riot foam—a substance meant to slow and stop people on the street—every few months, a couple of dozen pages furl out from the EPA to Rosemont's managers. Past communications have included the suggestion that the project might jeopardize the leopard frog, or the Gila topminnow, or the water umbrel. One official worry was that the project might impede the opportunity for people to canoe in a desert region where summer temperatures reach 118 degrees.

The EPA churns out concerns about potential impacts on 18 miles of streams and threats to the "water quality" of the Davidson Canyon Wash, a single gulch—filled intermittently by rain—in a state with 39,039 rivers and streams. The agency also lets Rosemont know it will be looking at the impacts of mining on air quality—but only after a preliminary process to determine which air-quality standard should apply. Each governmental query receives a Rosemont reply in the never-ending race toward a moving finish line.

Even this snail's pace doesn't satisfy antimining advocates. Many environmentalists and anticapitalists (and many critics are both) would like to see the EPA simply short-circuit the review process and veto the mine proposal. After all, the agency has used Section 404(c) of the Clean Water Act to shut down a mine—famously, the Spruce Mine in West Virginia—even after it had received its operating permit.

For the most vocal environmental groups, the EPA is perfectly suited as judge and jury. Jennifer Krill, the director of Earthworks, confirmed in congressional testimony earlier this year that her group has never supported or endorsed a single U.S. mine. The threat of an EPA Clean Water Act veto of various projects hangs over more than $220 billion in economic development, ranging from mines to agriculture and infrastructure projects.

Sadly for communities around the proposed mine—about 30 miles southwest of Tucson in an area where unemployment is still stubbornly close to 10%—every day of delay means a longer wait for much-needed jobs, which would funnel much-needed revenue into local tax coffers. Mothers and fathers struggling to support their families may feel endangered, but unlike the leopard frog, they're not on a government list.

The nation, meanwhile, is losing the output of a mine with a projected yearly output of more than 100,000 metric tons. That's Arizona copper the U.S. wouldn't need to import from abroad, feeding a negative balance of trade, and providing political and economic leverage to nations that supply the metal we fail to mine ourselves.

If we mine fewer metals, won't manufacturing jobs leave the U.S. and go where the metals are? If we don't mine in the U.S.—with arguably the world's most stringent oversight, environmental and safety standards—won't Americans

end up importing products made with metals mined in other places under less-stringent standards (if any), leading to far more damage to the environment and the health of the miners? All of these questions are critical to determining whether a mine serves the public good. Surely they must matter to the nation as much as a topminnow does to the EPA.

Finally, did Congress pass the National Environmental Protection Act to put in place a means of balancing the benefits of resource extraction with competing public goods? Or did it set up an endless bureaucratic gauntlet designed to delay, derail or economically exhaust mine developers?

Seven and a half years on, Rosemont Copper is still waiting for an answer.

Mr. McGroarty is president of American Resources Policy Network, a nonprofit, nonpartisan education and public policy research organization in Washington, D.C.